

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
)
Lifeline and Link Up Reform and Modernization ) WC Docket No. 11-42

ORDER

Adopted: November 16, 2020

Released: November 16, 2020

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In response to the impact of the COVID-19 pandemic in the United States, the Wireline Competition Bureau has waived certain Lifeline program rules in five previous Orders to provide necessary relief for low-income households. In light of the ongoing pandemic, we find good cause to extend, on our own motion, our prior waivers of the Lifeline program rules governing documentation requirements for subscribers residing in rural areas on Tribal lands, recertification, reverification, general de-enrollment, subscriber usage, and income documentation through February 28, 2021.1 We will continue to monitor the situation to determine whether any additional extension of these waivers is appropriate.

II. DISCUSSION

2. The Commission's rules may be waived for good cause shown.2 The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.3 In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy.4

3. The Lifeline program provides qualifying low-income consumers discounts on voice or broadband Internet access service to help ensure that all Americans have access to affordable

1 See Lifeline and Link Up Reform and Modernization, Order, 35 FCC Rcd 2729 (WCB Mar. 17, 2020) (First Lifeline Waiver Order) (temporarily waiving Lifeline recertification and reverification requirements); Lifeline and Link Up Reform and Modernization, Order, 35 FCC Rcd 2950 (WCB Mar. 30, 2020) (Second Lifeline Waiver Order) (temporarily waiving Lifeline usage and general de-enrollment requirements and directing the Universal Service Administrative Company (USAC) to suspend periodic reviews); Lifeline and Link Up Reform and Modernization, Order, 35 FCC Rcd 4482 (WCB Apr. 29, 2020) (Third Lifeline Waiver Order) (temporarily waiving three-month documentation requirement for subscribers to demonstrate income eligibility); Lifeline and Link Up Reform and Modernization, Order, 35 FCC Rcd 5510 (WCB June 1, 2020) (Fourth Lifeline Waiver Order) (temporarily waiving documentation requirements for subscribers residing in rural areas on Tribal lands); Lifeline and Link Up Reform and Modernization, Order, 35 FCC Rcd 8791 (WCB Aug. 17, 2020) (Fifth Lifeline Waiver Order) (extending prior waivers through November 30, 2020).

2 47 CFR § 1.3.

3 Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

4 WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969); Northeast Cellular, 897 F.2d at 1166.

communications service.<sup>5</sup> We find that good cause exists to extend through February 28, 2021 our recent waivers of certain Lifeline program rules governing documentation requirements for subscribers residing in rural areas on Tribal lands, recertification, reverification, general de-enrollment, subscriber usage,<sup>6</sup> and income documentation.<sup>7</sup> The circumstances necessitating those prior waivers have not materially changed, and we therefore find that this extension is warranted to ensure that no Lifeline subscribers are involuntarily de-enrolled from the Lifeline program during this unprecedented national pandemic.

4. Extension of the waiver of the recertification and reverification rules will prevent the de-enrollment of any Lifeline subscribers who would otherwise have been required to certify their continued eligibility to the National Lifeline Eligibility Verifier (National Verifier) during the waiver period. Because the National Verifier sends recertification notices to subscribers 90 days prior to their anniversary dates, this waiver will impact Lifeline subscribers with anniversary dates that fall on or between April 14, 2020 and May 29, 2021. Similarly, USAC also conducts a one-time reverification of eligibility for each existing Lifeline subscriber around the time that the National Verifier is hard launched in a state or territory. We direct USAC to not de-enroll any Lifeline subscriber for failure to successfully respond to a reverification documentation request for those subscribers with documentation deadlines falling on or before February 28, 2021. We also direct USAC to not open any new reverification documentation requests on or before February 28, 2021 and to provide impacted subscribers a new opportunity to provide any necessary eligibility documentation after the end of the waiver period.

5. As we noted in our last extension of these waivers, the Lifeline rule waivers necessitated by the pandemic have resulted or will result in recertification delays for a majority of Lifeline program subscribers and re-starting the recertification process for most of the Lifeline population simultaneously at the end of the waiver period would present an unreasonable administrative challenge for USAC and the three state administrators. We also note that, on October 13, 2020, an amendment to the Lifeline recertification rule took effect, requiring that Lifeline subscribers' annual recertifications be completed by the end of each calendar year instead of by each subscriber's anniversary date.<sup>8</sup> To provide USAC and the state administrators with enough time to reasonably stagger the beginning of recertifications again after the expiration of the waiver granted in this Order, and consistent with the amended rules' requirement that Lifeline subscribers undergo one recertification per calendar year, we clarify that subscribers' eligibility need only be recertified once in calendar year 2021. Any subscribers with anniversary dates falling on or between January 1, 2021 and May 29, 2021 may have their recertification process delayed under this Order but must have their eligibility recertified after the waiver has expired.

6. For the same reasons set forth in our *Fifth Lifeline Waiver Order*, we similarly extend through February 28, 2021 our direction to USAC to pause its periodic, targeted reviews to identify and de-enroll ineligible subscribers.<sup>9</sup> USAC should not involuntarily de-enroll any subscriber nor seek

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<sup>5</sup> See *Bridging the Digital Divide for Low-Income Consumers*, Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 34 FCC Rcd 10886, 10887, para. 3 (2019) (*2019 Lifeline Order*).

<sup>6</sup> The Public Utility Commission of Oregon submitted an *ex parte* letter recommending that instead of extending the non-usage waiver, we reinstate the non-usage requirement and temporarily extend the non-usage period by increasing the number of days to cure any non-usage. Letter from Megan Decker, Chair, Public Utility Commission of Oregon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 2 (filed Nov. 4, 2020). We find, however, that the public interest in ensuring that subscribers have the Lifeline service active if they need it during this pandemic outweighs the cost of extending the non-usage waiver, and we therefore extend the non-usage waiver and decline the request of the Public Utility Commission of Oregon.

<sup>7</sup> *Second Lifeline Waiver Order*, 35 FCC Rcd at 2952-53, paras. 7-11.

<sup>8</sup> See 47 CFR § 54.410(f); *2019 Lifeline Order*, 34 FCC Rcd at 10934-36, 10956, paras. 111-114, 176; FCC, *Bridging the Digital Divide for Low-Income Consumers*, 85 Fed. Reg. 41930 (July 13, 2020) (announcing approval under the Paperwork Reduction Act and effective date of October 13, 2020).

<sup>9</sup> See *Fifth Lifeline Waiver Order*, 35 FCC Rcd 8791, para. 7.

additional documentation from an eligible telecommunications carrier or subscriber as part of those reviews until that date.

7. We similarly extend through February 28, 2021 our recent waiver of the Lifeline program's requirement that consumers seeking to demonstrate income-based qualification for the Lifeline program must provide at least three consecutive months of documentation to confirm their income.<sup>10</sup> The circumstances necessitating this prior waiver have not changed, and we therefore find that this extension is warranted to ensure that consumers are able to successfully complete the Lifeline enrollment process.

8. Finally, we also extend through February 28, 2021 our latest waiver for consumers residing in rural areas on Tribal lands of the requirement that such consumers submit the necessary documentation to correct an automated check error(s) prior to enrolling in the Lifeline program and receiving Lifeline service.<sup>11</sup> The circumstances necessitating this waiver have not changed, and we find that this extension is warranted to ensure that eligible telecommunications carriers may begin immediately providing Lifeline-supported service to any consumer residing in a rural area on Tribal lands who applies for Lifeline but is unable to provide the necessary documentation to resolve a failed automated check at the time of application. The consumer will have 45 days from the time of application to provide such documentation, but if the consumer does not submit the necessary documentation, USAC will de-enroll the consumer from the Lifeline program.

9. *Preventing Waste, Fraud, and Abuse.* We are committed to guarding against waste, fraud, and abuse in the Universal Service Fund (USF) programs. Although we grant the limited waiver described herein, service providers remain otherwise subject to audits and investigations to determine compliance with Lifeline program rules and requirements. We will require USAC to recover funds that we discover were not used properly through its normal processes. We emphasize that we retain the discretion to evaluate the uses of monies disbursed through the USF programs and to determine on a case-by-case basis that waste, fraud, or abuse of program funds occurred, and that recovery is warranted. In the case of the rural areas in Tribal lands waiver extended in this Order, we note that Lifeline subscribers residing in rural areas on Tribal lands currently comprise approximately 2% of total Lifeline subscribership, and we thus expect that USAC will be able to sufficiently monitor the claims made pursuant to this waiver for potential waste, fraud, and abuse. Additionally, in the event we discover any improper activity resulting from our action today, we will subject the offending party to all available penalties at our disposal, and will direct USAC to recover funds, assess retroactive fees and/or interest, or both. In the case of suspected fraudulent activity, USAC retains its ability to recover funds, de-enroll fraudulent accounts, and prevent persons engaging in such activity from accessing the USAC Lifeline systems, as appropriate. We remain committed to ensuring the integrity of the Lifeline program and will continue to aggressively pursue instances of waste, fraud, or abuse under our own procedures and in cooperation with law enforcement agencies. Finally, we direct USAC to include demonstration of eligibility under this waiver in its risk-based sampling for USAC's periodic, targeted reviews after this waiver expires and USAC resumes such reviews.

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<sup>10</sup> *Third Lifeline Waiver Order*, 35 FCC Rcd at 4484, paras. 8-10.

<sup>11</sup> *Fourth Lifeline Waiver Order*, 35 FCC Rcd at 5512-14, paras. 7-11.

**III. ORDERING CLAUSES**

10. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that sections 47 CFR 54.405(e)(1), 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), 54.410(a), 54.410(b)(1)(i)(B), and 54.410(f) of the Commission's rules are waived to the limited extent provided herein.

11. IT IS FURTHER ORDERED, that pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief  
Wireline Competition Bureau